

## THE CITY OF CLAYTON

Board of Aldermen  
City Hall – 10 N. Bemiston Avenue  
September 24, 2013  
7:10 p.m.

### Minutes

Mayor Sanger called the meeting to order and requested a roll call. The following individuals were in attendance:

Aldermen: Michelle Harris, Cynthia Garnholz, Joanne Boulton, and Alex Berger III.

Mayor Sanger  
City Manager Owens  
City Attorney Karr

Absent: Andrea Maddox-Dallas and Mark Winings.

Mayor Sanger asked for any questions or comments relating to the September 10, 2013 minutes, which were previously provided to the Board.

**Alderman Garnholz moved to approve the September 10, 2013 minutes. Alderman Boulton seconded the motion.**

**The motion to approve the minutes passed unanimously on a voice vote.**

### PUBLIC REQUESTS AND PETITIONS

None

**Mayor Sanger opened the Public Hearing with regard to Bill No. 6412 and requested proof of publication.**

### A PUBLIC HEARING AND RELATED ORDINANCE TO CONSIDER AMENDMENTS TO CHAPTER 405, ZONING REGULATIONS, TO INCLUDE DRIVE THROUGH ESTABLISHMENTS FOR PHARMACIES AS A CONDITIONALLY PERMITTED USE IN THE GENERAL COMMERCIAL (C-2) ZONING DISTRICT

City Manager Owens reported that this is a public hearing and subsequent ordinance for the Board of Aldermen to consider a private application for a text amendment to the City's Zoning Regulations to allow drive through establishments for pharmacies as a conditionally permitted use in the General Commercial (C-2) zoning district. Within the C-2 zoning district, pharmacies are currently permitted by right; however, drive-throughs are not permitted. Drive-throughs associated with pharmacies are not currently allowed in any zoning district within the City.

Properties with a zoning designation of C-2 are primarily located adjacent to Downtown and on Clayton Road.

The C-2 zoning district accommodates a variety of commercial uses and restricts the effects of intensification, thereby maintaining the quality of life in established residential neighborhoods. Uses currently permitted by right in this district include typical business office uses, medical offices,

banks, pharmacies and retail establishments. Most automobile-related uses such as car washes, gasoline and oil service stations (excluding body work), and drive through establishments for financial institutions are allowed with a Conditional Use Permit.

The operational impacts of drive-through pharmacies are similar in intensity to those associated with drive-through establishments for financial institutions, which are allowed as a conditional use in the C-2 zoning district. Many pharmacies operate 24 hours; however, peak hours of use tend to occur in the morning (between 7:00 a.m. and 9:00 a.m.) and in the evening (4:00 p.m. to 6:00 p.m. Monday through Friday).

The Board of Aldermen recently adopted design guidelines for drive-through establishments. The guidelines address the layout, form and appearance of drive-throughs, and aim to promote:

- Compatible development that fits in well with the surrounding areas and minimizes impacts on adjacent uses
- Functional and safe traffic, pedestrian and bicycle movement
- Safe stacking lane and site access placement
- Safe and accessible pedestrian connections to the building from both the public and private realms
- A high quality pedestrian-supportive urban streetscape

The addition of drive-through establishments for pharmacies as a conditional use in the C-2 zoning district is consistent with other automobile-related uses that are already allowable conditional uses in this zoning district. Staff, the Plan Commission and the Board of Aldermen will have the opportunity to review proposals on a case-by-case basis for their compliance with the design guidelines and place appropriate conditions on the use to mitigate any potential negative impacts.

On September 3, 2013 the Plan Commission considered this application for text amendment to allow drive through facilities for pharmacies as a conditional use and voted 5 to 1 to recommend approval of the proposed amendment to the Board of Aldermen.

Recommendation is to approve the text amendment to Chapter 405 (Zoning Regulations) of the City's Land Use Code to the Board of Aldermen as proposed.

Mr. John King, representative for CVS Pharmacy, addressed the Board stating that they are asking for the text amendment to allow the business to have a drive-through. His clients have leased the former Linen and Things building and that they will be submitting an application for a Conditional Use Permit in the near future pending tonight's Board approval.

Mayor Sanger commented that the text amendment request is for the C-2 zoning and not specifically for CVS Pharmacy. Mayor Sanger also expressed his concerns as to the process of a "text amendment" for this specific as compared to the process done for the Maryland Gateway Overlay District.

City Manager Owens stated that the Maryland Gateway Overlay District was not processed as a text amendment and staff believed that in this current request the text amendment would be the best application. He explained that staff felt that the process used for the Maryland Gateway Overlay District was the best way to implement the Downtown Master Plan.

Alderman Boulton pointed out that in Ward 1 there are Urban Design Districts which would take precedence over the underlying C-2 Zoning and therefore the proposed ordinance would not impact Ward 1.

In response to Alderman Harris' question, Susan Istenes stated that with respect to the overall size of the C-2 property that is throughout the City, most lacked adequate depth to meet the requirements for a drive through. In addition to going through the conditional use process to decide whether the use is appropriate or not there is also the site plan review process to see if the project would meet all of the requirements (parking, setbacks, drive-through lane widths, property circulation, etc.). Given the requirements there are very few parcels in the City that are zoned C-2 and they are very small compared to the CVS Pharmacy site, therefore unlikely to meet the guidelines and/or requirements for a drive-through.

In response to Mayor Sanger's question, Susan Istenes stated that given the current market for Walgreens and CVS they tend to be located on large prominent intersections, on large properties with lots of parking and usually no more than two drive-through facilities. Given all of those conditions in her opinion it is highly unlikely for someone to come into the City to build another Walgreens or CVS type facility, but a smaller facility (i.e. Medicine Shop) could possibly work.

In response to Alderman Harris' question, Alderman Garnholz explained that the Plan Commission's vote of 5-1 was due to a concern that C-2 zoning is basically a "patchwork" throughout Clayton and approval could possibly lead to requests for drive throughs city-wide.

Alderman Boulton suggested that the ordinance should be amended to include: *"subject to the design guidelines and requirements for drive through facilities"*.

Susan Istenes stated that she is very comfortable with including this language in the ordinance.

Alderman Garnholz commented that the Plan Commission felt that the design criteria and requirements did apply to all requests for a drive-through. Susan Istenes agreed.

City Attorney Karr confirmed that this would be an appropriate time to make motion to include the text referring to the design criteria for drive throughs.

**Alderman Boulton moved to approve the amendment to the C-2 Zoning District to allow drive-through facilities for pharmacies subject to the design guidelines and requirements for drive-through facilities as amended. Alderman Berger seconded.**

**The motion passed unanimously on a voice vote.**

**Mayor Sanger closed the Public Hearing.**

**Alderman Harris introduced Bill No. 6412, an ordinance to approve an amendment to Chapter 405, Zoning Regulations to include drive through establishments for pharmacies as a conditionally permitted use and subject to the adopted design guidelines for drive-throughs as amended to be read for the first time by title only. Alderman Garnholz seconded.**

**City Attorney Karr reads Bill No. 6412, as amended, an ordinance Revising Chapter 405 (Zoning Regulations) of Title Iv (Land Use) of the Municipal Code of the City of Clayton, Missouri, Section 405.3120 (Permitted Uses For The "C-2" Commercial District) to Include Drive Through Establishments for Pharmacies as a Conditionally Permitted Use in the General Commercial District, and other actions related thereto for the first time by title only.**

**The motion passed unanimously on a voice vote.**

**Alderman Harris introduced Bill No. 6412, an ordinance to approve an amendment to Chapter 405, Zoning Regulations to include drive through establishments for pharmacies as a conditionally permitted use as amended to be read for the second time by title only. Alderman Garnholz seconded.**

**City Attorney Karr reads Bill No. 6412, as amended, for the second time; Alderman Harris – Aye; Alderman Garnholz – Aye; Alderman Boulton – Aye; Alderman Berger – Aye; and Mayor Sanger – Aye. The Bill was adopted and became Ordinance No. 6289 of the City of Clayton.**

**A PUBLIC HEARING AND RESOLUTION TO CONSIDER APPROVING A CONDITIONAL USE PERMIT FOR TANI SUSHI LOCATED AT 7726 FORSYTH BOULEVARD**

**Mayor Sanger opened the Public Hearing with regard to Resolution No. 13-21 and requested proof of publication.**

City Manager Owens reported that this is a public hearing and subsequent resolution for a conditional use permit for the proposed operation of Tani Sushi at 7726 Forsyth Boulevard. Tani Sushi will be relocating from their current location at 16 South Bemiston Avenue.

The restaurant space measures 6,464 square feet (including the mezzanine level) and provides seating for 218 patrons. The outdoor dining area measures approximately 865 square feet and provides seating for 76 patrons.

Proposed hours of operation are Monday through Friday, 11:00 a.m. to 2:00 p.m., Monday through Thursday, 4:30 p.m. to 10:00 p.m., Friday, 4:30 p.m. to 11 p.m., Saturday, 5:00 p.m. to 11:00 p.m., and Sunday, 11:00 a.m. to 10:00 p.m. Deliveries to the restaurant will be made through the existing loading area located in the Centene parking garage. Trash will be stored in existing receptacles located in the Centene parking garage. Delivery service from the restaurant is not proposed. Parking will be provided in the Centene parking garage. Valet parking will also be available.

The Plan Commission considered this request at their September 3, 2013 meeting and voted to recommend approval of the Conditional Use Permit to the Board of Aldermen. The Architectural Review Board considered the proposed outdoor dining at their September 3, 2013 meeting and voted to approve. Recommendation is to conduct a public hearing and approve the resolution.

Mr. Tyler Stephens, Core10 Architecture, representing Eric Heckman, owner, who was present in the audience, addressed the Board stating that the restaurant will be relocating to the new address next to Niche/Pasteria Restaurant in the Centene Corporation Building.

In response to the Board's questions, Mr. Heckman stated that he anticipates opening by the end of January 2014. He also added that they are planning a mezzanine level and possibly a nightclub in the lower level. There are no plans to close the current restaurant and nightclub before opening at the new location.

**Mayor Sanger closed the public hearing.**

**Alderman Harris moved to approve Resolution No. 13-21, a Conditional Use Permit for Tani Sushi Restaurant located at 7726 Forsyth Boulevard. Alderman Garnholz seconded.**

**The motion passed unanimously on a voice vote.**

**A PUBLIC HEARING AND RESOLUTION TO CONSIDER APPROVING A CONDITIONAL USE PERMIT FOR THE EXPANSION OF BAR LES FRERES LOCATED AT 7639 WYDOWN BOULEVARD**

**Mayor Sanger opened the public hearing with regard to Resolution No. 13-22 and requested proof of publication.**

City Manager Owens reported that this is a public hearing and subsequent resolution for a conditional use permit for the proposed expansion of Bar Les Freres, located at 7637 Wydown Boulevard, into the adjacent tenant space addressed 7639 Wydown Boulevard (formerly occupied by Arabella, a retail establishment).

In May, 2012, the Board of Aldermen approved a Conditional Use Permit for the operation of Bar Les Freres at 7637 Wydown Boulevard. Zoe Robinson, restaurant owner, is requesting an expansion which will result in an additional 680 square feet (for a total of approximately 1,479 square feet) and seating for an additional 22 patrons. The hours of operation and all other aspects of the restaurant remain the same.

Because the restaurant is located outside the Central Business District, employee off-street parking is required. The required number of parking spaces is based on the maximum number of employees that will be working at the restaurant on any given shift. According to the applicant, a maximum of eight employees will be working per shift; therefore eight parking spaces are required. The applicant has submitted proof of parking agreements for eight parking spaces including three located behind the restaurant, two behind 7626 Wydown Boulevard, and three at 700 South Hanley Road (Central Christian School).

The Plan Commission considered this request at their September 3, 2013 meeting and voted to recommend approval of the Conditional Use Permit to the Board of Aldermen. No exterior alterations in conjunction with the expansion are proposed at this time.

Recommendation is to conduct a public hearing and approve the Resolution.

In response to the Board's questions, Ms. Zoe Robinson, owner, stated that she will be expanding into the next door which was formerly an antiques store and is planning on restoring the outside façade of the building. Plans are to open in mid-December.

**Mayor Sanger closed the public hearing.**

**Alderman Harris moved to approve Resolution No. 13-22, a Conditional Use Permit for Bar Les Freres located at 7639 Wydown Boulevard. Alderman Garnholz seconded.**

**The motion passed unanimously on a voice vote.**

**AN ORDINANCE TO CONSIDER APPROVING AN INCREASE IN CONTINGENCY FOR A CONTRACT WITH WESTERN WATERPROOFING, INC. FOR THE 10 S. BRENTWOOD GARAGE RESTORATION PROJECT**

City Manager Owens reported that the existing parking structure at 10 S. Brentwood Boulevard was constructed in 1982 and had received only minor repairs over the past 30 years. The Board of Aldermen approved a contract with Western Waterproofing at their June 11, 2013 meeting for a scope of repairs that includes significant structural repairs primarily on the post-tension cable decks, installation of a protective membrane on the decks and tuck pointing the masonry exterior. These

repairs and the addition of the protective membrane will extend the life of the structure for decades with regularly scheduled maintenance.

The contract with Western Waterproofing, which was competitively bid, was for \$588,875.00 and a contingency of \$89,000. The original budget was \$750,000.00. The significant difference in bid and budget is the result of the contract securing the unit price for post-tension cable repair and not quantifying the number of defective cables. Since the cables are encased in concrete, their condition for the most part is unknown until they are exposed. As cables are exposed during concrete removals, the quantities become known. To date, the total project cost is \$676,392.20, which is near the maximum contractual authority. Based on what we know to date, we will need to extend the contingency another \$122,000. We will hope to avoid spending this amount, but want to have authorization to continue the project should the worst case trend continue. Hence, the total project cost is anticipated to be just under \$800,000 or as much as 6.5% over budget.

Recommendation is to approve the resolution for an increase of \$122,000.00 in contingency for the contract with Western Waterproofing for the 10 S. Brentwood Garage restoration project.

In response to Alderman Harris' question, John Wulf stated that he anticipates the project to be completed by the end of November. The jackhammering should cease within three weeks.

**Alderman Harris introduced Bill No. 6413, an ordinance to approve an amendment to the contract with Western Waterproofing for repairs to 10 S. Brentwood Blvd. garage to be read for the first time by title only. Alderman Garnholz seconded.**

**City Attorney Karr reads Bill No. 6413, ordinance approving an increase in Contingency for a Contract with Western Waterproofing, Inc. for the 10 S. Brentwood Boulevard Garage Restoration Project for the first time by title only.**

**The motion passed unanimously on a voice vote.**

**Alderman Harris introduced Bill No. 6413, an ordinance to approve an amendment to the contract with Western Waterproofing for repairs to 10 S. Brentwood Blvd. garage to be read for the second time by title only. Alderman Garnholz seconded.**

**City Attorney Karr reads Bill No. 6413 for the second time; Alderman Harris – Aye; Alderman Garnholz – Aye; Alderman Boulton – Aye; Alderman Berger – Aye; and Mayor Sanger – Aye. The Bill was adopted and became Ordinance No. 6290 of the City of Clayton.**

**AN ORDINANCE TO CONSIDER APPROVING AMENDMENTS TO CHAPTER 210; ANIMAL REGULATIONS; ARTICLE II. GENERAL ANIMAL, LIVESTOCK, BIRDS AND DOMESTIC FOWL REGULATIONS, SECTION 210.260 AND SECTION 220.020 OF THE MUNICIPAL CODE OF CLAYTON**

City Manager Owens reported that this is an update to the Code to add some regulation related to the keeping of domestic fowl in backyards and neighborhoods. In a review of the Code it was discovered that there were some conflicts such as in one section domestic fowl is prohibited and in another section they were specifically regulated. The proposed amendment will clean up those sections. Staff has created a group of regulations that will help to require the screening of the pens and regulation setbacks of those pens. Those that choose to keep domestic fowl can do so in a way that will not have the potential to be disruptive to neighbors and will also keep the fowl safe and healthy. In an effort to make this work and through the licensing and inspection process the City is establishing costs and fees associated to keeping domestic fowl.

In response to Alderman Harris' question, Susan Istenes stated that the setback would be five feet on the sides and rear of the property, but it also depends on the zoning associated with the area.

Mr. Walter Shifrin, 925 S. Central, addressed the Board asking about the time for residents to comply with the new requirements of the ordinance if approved tonight.

Mayor Sanger stated that anyone who currently had chickens prior to tonight's proposed amendment will have to obtain a permit within 120 days after the ordinance is approved. He also added that roosters are not allowed and they would be included under the nuisance or noise code.

Alderman Garnholz suggested that the language is changed regarding the "prohibition to give away eggs".

City Attorney Karr recommended changing the language to read: *"No animals or eggs may be sold to any person not a resident of the premises where kept."*

**Alderman Harris moved to amend the language to read: "No animals or eggs may be sold to any person not a resident of the premises where kept." Alderman Garnholz seconded.**

**The motion passed unanimously on a voice vote.**

Alderman Harris noted a correction in the Section numbers as listed on the Board Agenda.

**Alderman Harris introduced Bill No. 6414, an ordinance to consider an amendment to Section 210.260 and Section 220.020 regarding Domestic Fowl for the first time by title only. Alderman Garnholz seconded.**

**City Attorney Karr reads Bill No. 6414, an Ordinance Revising Chapter 210 (Animal Regulations) Of Title II (Land Use) of the Municipal Code of the City Of Clayton, Missouri, General Animal, Livestock, Birds And Domestic Fowl Regulations, Section 210.260 and Section 220.020 of the Municipal Code of Clayton and other actions related thereto for the first time by title only.**

**The motion passed unanimously on a voice vote.**

**Alderman Harris introduced Bill No. 6414, an ordinance to consider an amendment to Section 210.260 and Section 220.020 regarding Domestic Fowl to be read for the second time by title only. Alderman Garnholz seconded.**

**City Attorney Karr reads Bill No. 6414 for the second time; Alderman Harris – Aye; Alderman Garnholz – Aye; Alderman Boulton – Aye; Alderman Berger – Aye; and Mayor Sanger – Aye. The Bill was adopted and became Ordinance No. 6291 of the City of Clayton.**

#### Other

Alderman Garnholz reported that she and Alderman Harris attended the Clayton Retail Group meeting and they are planning an annual Downtown Holiday Stroll scheduled for November.

Alderman Boulton reported that she attended the Shakespeare in the Street-A *Winter's Tale* event at The Grove which was a lot of fun. There were 500-600 people in attendance and the restaurants said that they were doing very well.

City Manager Owens announced that the City has been awarded the *Certificate of Excellence* plaque from the International City/County Management Association in recognition of exceeding the

standards established in performance measurements and reporting. The recognition is given to approximately 20 cities that exceed these standards.

City Manager Owens reported that he attended the ICMA Annual Conference and expressed his appreciation to be able to attend. He commented that it struck him to see how much change is occurring in local governments in the way cities are doing business and the public is interacting. Clayton is doing a lot of things that are not surprisingly the right direction and it is nice to see how we are stepping up and get some new ideas. He noted that he had the opportunity to meet with Fred Merrill, Principle with Sasaki, and they discussed the new ideas that were happening in the City. Mr. Merrill expressed his excitement and is open to the opportunity to visit Clayton and provide his thoughts on the new ideas for Central Avenue and the Downtown area.

**Alderman Berger moved that Board adjourn to a closed meeting, with a closed vote and record, as authorized by Section 610.021(1), (2) and (3) Revised Statutes of Missouri, relating to legal issues, real estate and/or personnel, and to discuss matters related to negotiation of a contract pursuant to Section 610.021(12), RSMo. and/or proprietary information pursuant to Sec. 610.021(15). Alderman Boulton seconded the motion.**

**Alderman Harris – Aye; Alderman Garnholz – Aye; Alderman Boulton – Aye; Alderman Berger – Aye; and Mayor Sanger – Aye.**

There being no further business the meeting was adjourned at 8:00 p.m.

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Mayor

ATTEST:

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City Clerk